IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13818 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YUNUS ALIAS PIPE ABDULREHMAN CHHIPA (NILGAR)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13818 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad City on 15.3.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration seven offences came to be registered against the petitioner under sec. 379, 447 and 114 of IPC for the theft of vehicles. The offences came to be registered against the petitioner on 3.12.2002, 2.12.2002, 9.2.2003, 11.2.2003, 15.2.2003, 12.2.2003 and 14.2.2003. The detaining authority also took into consideration the two statements recorded by the sponsoring authority in-camera on 8.3.2003 as verified by the detaining authority on 12.3.2003 revealing incidents of 12.2.2003 and 20.12.2003. The detaining authority, from the above material passed the order impugned in this petition.

Heard ld. advocate Mr. Pandya for Ms Krishna Mishra for the petitioner and Mr. Chauhan ld. AGP for the respondents at length. Affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

Out of various contentions raised and controverted on behalf of the respondents, the matter can be disposed of on the ground whether the detaining authority applied mind before passing of the detention order especially to the vital aspects of the matter. From the grounds served upon the petitioner, it is clear that when the order of detention came to be served upon the petitioner, the petitioner was under judicial custody in all the seven offences registered against him. The petitioner never applied for bail and according to the statement made by ld. advocate for the petitioner, he is under judicial custody till date. In this respect, the detaining authority reached to the subjective satisfaction though the petitioner was under judicial custody but he was likely to file an application for bail and on so filing bail application, he was likely to be released on bail. The detaining authority also reached to the subjective satisfaction that on so releasing on bail, the petitioner was likely to indulge in anti social activities which would be prejudicial to the maintenance of public order. Though affidavit in reply filed by the detaining authority, in para-13 it has been stated by the detaining authority that the detaining authority was aware that the petitioner was in judicial custody and

even though looking to the material placed before him, he passed the order against the petitioner. The question is whether material placed before the detaining authority was sufficient to reach to the subjective satisfaction that the petitioner was likely to be released on bail. While going through the material placed on record, it is found that there is no material at all to reach to the subjective satisfaction that the petitioner was likely to be released on bail. Therefore, this is a case of non-application of mind by the detaining authority to the vital aspect of the matter. The facts of this case are covered by a decision of the Apex Court in the matter of Amrutlal and others vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC p. 3675. The order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 15.3.2003 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
mandora/